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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DOMINO'S PIZZA FRANCHISING LLC, a Delaware limited liability company; and DOMINO'S PIZZA MASTER ISSUER LLC, a Delaware limited liability company,

Plaintiffs,

v.

CALVIN YEAGER, an individual; VALLEY PIZZA, INC., a Nevada corporation; and LAKESIDE PIZZA, INC., a California corporation,

Defendants.

CASE NO. 3:10-CV-560

OPPOSITION TO MOTION TO DISMISS, REQUEST FOR ATTORNEYS FEES

And

REPLY IN SUPPORT OF FINDING OF CONTEMPT

COME NOW, Plaintiffs DOMINO'S PIZZA FRANCHISING LLC and DOMINO'S PIZZA MASTER ISSUER LLC (collectively, "Domino's"), by and through their counsel, Armstrong Teasdale LLP, hereby oppose the Motion to Dismiss and Request for Attorneys Fees filed by Defendants and Matthew Matlock, Melissa Yeager, and Pronto Pizza, Inc. ("Related Parties") and submit their Reply in support of a finding of contempt against Matthew Mattlock and Pronto Pizza.

I. SINCE ONLY DEFENDANT YEAGER FILED FOR BANKRUPTCY PROTECTION, THIS ACTION WAS NOT STAYED WITH RESPECT TO THE OTHER DEFENDANTS

In a misguided attempt to distract this Court from the blatant disregard of court orders and judgments, the Defendants and Related Parties first assert that somehow the bankruptcy of Defendant Yeager prevents the enforcement of the Final Judgment against the other named Defendants, Lakeside Pizza, Inc., a California corporation ("Lakeside") and Valley Pizza, Inc., a Nevada corporation ("Valley"). Defendants and Related Parties are wrong.

A. Defendants Valley And Lakeside Are Still Subject To The Final Judgment

The automatic stay protects only the debtor, property of the debtor, or property of the estate; it does not protect non-debtor parties or their property. See, 11 U.S.C. 362(a); *Boucher v. Shaw*, 572 F.3d 1087, 1092 (9th Cir. 2009).

Defendant Yeager filed a petition for protection under Chapter 7 of the Bankruptcy Code on November 18, 2010 in the United States Bankruptcy Court for the Eastern District of California ("Petition"). As noted in the Petition, it is an individual debtor bankruptcy. (Exhibit 1). Neither Defendant Lakeside, nor Defendant Valley is a named debtor. (Exhibit 1). To the contrary, Defendants Lakeside and Valley are listed on Schedule H of the Petition as co-debtors to Dominos. (Exhibit 1). Therefore, it is clear that Defendant Yeager's bankruptcy does not stay this action.

B. Under Nevada Law, Valley's Dissolution Does Not Remove Its Liability

Defendants and Related Parties seem to think that dissolution of the corporations owned by Defendant Yeager removes any liability or other responsibility by them as legal entities.[1] Nothing could be further from the truth. Defendant Valley was a

[1] The post-termination obligations and property at issue involve the former franchise location in Gardnerville, Nevada with DefendantValley only.

Nevada corporation subject to Nevada law. NRS 78.585 provides that:

> The dissolution of a corporation does not impair any remedy or cause of action available to or against it or its directors, officers or shareholders arising before its dissolution and commenced within 2 years after the date of the dissolution. It continues as a body corporate for the purpose of prosecuting and defending suits, actions, proceedings and claims of any kind or character by or against it and of enabling it gradually to settle and close its business, to collect and discharge its obligations, to dispose of and convey its property, and to distribute its assets, but not for the purpose of continuing the business for which it was established.

Apparently, Valley was dissolved on October 25, 2010. (Exhibit 2). However, the Final Judgment had been issued on May 4, 2010, which was more than five months prior to the dissolution, and the Final Judgment was registered with this Court on August 3, 2010. Thus, there can be no doubt that Defendant Valley is still liable to Domino's under the Final Judgment, which includes the post-termination obligations. Furthermore, as its former officer and director, Defendant Yeager must carry out those obligations on behalf of Defendant Valley.

II. THE PROPERTY AT ISSUE IS NOT PART OF THE YEAGER BANKRUPTCY ESTATE, BUT WAS OWNED OR CONTROLLED BY VALLEY

Defendants and Related Parties also assert that the property at issue "obviously includes the telephone number, operating manual, customer list, and any other property which plaintiff is now seeking to recover . . ." (Motion to Dismiss, P 2, L 12-15). However, Defendants and Related Parties know better. As set forth above, Defendant Yeager's bankruptcy does not include Defendants Valley and Lakeside. Moreover, the property at issue, namely the telephone number, operating manual, and customer list, are not listed anywhere in the Petition as personal property or assets of Defendant Yeager. Of course, the aforementioned property could not have been part of Defendant Yeager's bankruptcy estate, but instead were the property of Defendant Valley. The Standard Franchise Agreement for Store #7415, executed on October 15, 2007 by Defendant Yeager ("Agreement") was actually with Defendant Valley (Defendant Yeager signed as President), as evidenced on Page 1 of the Agreement. (Exhibit 3). Thus, it was Defendant Valley that owned or controlled the telephone number, operating manual, and customer list that was supposed to be returned to Domino's.

III. WITH THE EXCEPTION OF LAKESIDE AND MELISSA YEAGER, ALL DEFENDANTS AND RELATED PARTIES WERE PERSONALLY SERVED THE FINAL JUDGMENT

A. Personal Service Was Effective

Purposely or not, Defendants and Related Parties incorrectly argue that the Related Parties were only served the Injunction Order and not the Final Judgment. To the contrary, the attached affidavits of service clearly show that the Final Judgment was served on the same day, September 3, 2010 to all of the Defendants and Related Parties, except Lakeside and Melissa Yeager[2] (Exhibit 4). It is of no legal consequence that the service of the Final Judgment was rendered to a person (Courtney McRae) at the store location at 1281 Kimmerling Road, Suite 18-A, Garnerville, Nevada that was not the named Defendants or Related Parties. If the person was authorized to accept service and accepted service, then personal service was effective, and Defendants and Related Parties have not cited any authority to the contrary. In fact, when registering a judgment in another federal district, 18 U.S.C. §1963 simply provides that:

> A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

[2] To the extent Melissa Yeager was not served the Injunction Order or Final Judgment, Domino's withdraws its request to find Ms. Yeager in contempt.

There is no requirement that service of a summons and complaint is required. Looking past the attempted misdirection of Defendants and Related Parties, it is clear that service was rendered.

B. Mattlock And Pronto Pizza Are Subject To The Final Judgment

Defendants and Related Parties believe that there can be no jurisdiction against the Related Parties, because the Final Judgment does not name them specifically. However, the Injunction Order was also personally served upon Matthew Mattlock and Pronto Pizza. (Exhibit 5). The Injunction Order set forth that:

> Defendants Calvin Yeager, Valley Pizza, Inc., and Lakeside Pizza, Inc., and their agents, servants, and employees, and those persons and entities in active concert or participating or privity with any of them, are prohibited from violating and are specifically required to honor the post-term obligation contained in the Franchise Agreements . . .

As set forth previously in its Motion to Enforce Judgment Pursuant to FRCP 70 and/or FRCP 71, Domino's has submitted evidenced that demonstrates that the Related Parties are indeed related to Defendants, acting in concert with them, or otherwise participating with them to circumvent the obligations owed to Domino's. At the very least, Matthew Mattlock and Pronto Pizza possessed notice of what the Final Judgment involved, including the obligations to return the telephone number, operation manual, and customer list to Domino's. On that basis, FRCP 70 and 71 should apply to enforce the obvious circumvention of the court orders and judgments. See, *Irwin v. Mascott*, 370 F.3d 924, 931 (9th Cir. 2004).

IV. WHAT REALLY HAPPENED HERE

Defendants purposely dishonored obligations owed to Domino's after termination of the franchises. With respect to the Gardnerville, Nevada location, Defendant Valley, not Defendant Yeager, entered into the Agreement with Domino's. Section 2.1 on Page 2 of the Agreement sets forth that the location of the store is 1281 Kimmerling Road, Suite 18-A, Gardnerville, NV 89460. (Exhibit 3). After Domino's terminated the Agreement, thus invoking the contractual post-termination obligations of Defendant Valley, there was a secret transfer of the business and its assets to a new company operating under the name "Pronto Pizza". (Exhibit 6). The new business is owned and/or operated by Matthew Mattlock. Domino's understood the current owner of this current "Pronto Pizza" business to be Pronto Pizza, Inc., a Nevada corporation formed December 29, 2009, shortly after termination of the Agreement occurred. (Exhibit 7). In an attempt to confirm the ownership status and whether a fraudulent transfer occurred to circumvent the Agreement and the rights of Domino's, counsel for Domino's sent Defendant Yeager's counsel a letter, dated March 16, 2010, requesting documentation to demonstrate that a bona fide sale of the business took place. (Exhibit 8). A response was never received. Instead, Defendant Valley later simply dissolved on October 25, 2010. (Exhibit 2). A few weeks later, Defendant Yeager filed for bankruptcy on November 18, 2010. (Exhibit 1). These actions were taken well after the Final Judgment was rendered and registered in this district, and well after service on multiple parties related to one another.

Now, Defendants and Related Parties state that Reier Enterprises is the owner of the store location in Gardnerville, Nevada doing business as Pronto Pizza; however, there is no evidence submitted by Defendants and Related Parties to support their contention.[3] Regardless, the parties purportedly operating the business at that location, whether Pronto Pizza, Inc., Matthew Mattlock, or even Reier Enterprises, have possession and/or control of the telephone number, operating manual, and customer list that was supposed to be returned to Domino's, even after orders, judgments, and other pleadings have been served and delivered to that location. Until now, there had been no response. Until now, there had been no explanation. For that, Pronto Pizza and Matthew Mattlock must comply with the mandate to return the telephone phone number, operating manual, and customer list to Domino's or be found in contempt and sanctioned accordingly. Domino's also must be

[3] Nevertheless, Domino's served the Injunction Order and Final Judgment upon Reier Enterprises as well.

awarded its attorneys fees and costs for having to pursue these matters.

CONCLUSION

Domino's has been trying to enforce its rights ever since Defendants breached their Franchise Agreement. Despite an Injunction Order, a Final Judgment, and the Enforcement Order, Domino's has been denied its rights under the law. After all this time, because Defendants and Related Parties have ignored this Court, as well as the Court in the Eastern District of Michigan, there must be consequences. Therefore, at least Matthew Mattlock and Pronto Pizza, Inc. must be ordered to comply or face sanctions for contempt. Either way, Domino's should and must be awarded its fees and costs.

DATED this 15th day of June, 2011.

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